

PT 01-47

Tax Type: Property Tax

Issue: Charitable Ownership/Use

**STATE OF ILLINOIS
DEPARTMENT OF REVENUE
OFFICE OF ADMINISTRATIVE HEARINGS
SPRINGFIELD, ILLINOIS**

FAYCO ENTERPRISES, INC.)		
Applicant)	A.H. Docket #	99-PT-0063
)	Docket #	99-26-4
v.)		
)	Parcel Index #	18-14-08-352-024
)		
THE DEPARTMENT OF REVENUE)	Barbara S. Rowe	
OF THE STATE OF ILLINOIS)	Administrative Law Judge	

RECOMMENDATION FOR DISPOSITION

Appearances: Burnside Johnson, Choisser & Sheafor by Dale Choisser for Fayco Enterprises, Inc.

Synopsis:

The hearing in this matter was held at the Illinois State Office Complex, 1100 Eastport Plaza Drive, Collinsville, Illinois on June 27, 2000, to determine whether or not Fayette County Parcel Index No. 18-14-08-352-024 qualified for exemption during the 1999- assessment year.

C. Robert Lindberg, Executive Director of Fayco Enterprises, Inc. (hereinafter referred to as the "Applicant") was present and testified on behalf of the applicant.

The issues in this matter include: first, whether the applicant was the owner of the parcel during the 1999-assessment year; secondly, whether the applicant is a charitable organization; and lastly, whether the parcel was in the process of adaptation or being used by the applicant for exempt purposes during the 1999-assessment year. After a thorough review of the facts and law presented, it is my recommendation that the requested exemption be granted. In support thereof,

I make the following findings and conclusions in accordance with the requirements of Section 100/10-50 of the Administrative Procedure Act (5 ILCS 100/10-50).

Findings of Fact:

1. The jurisdiction and position of the Department that Fayette County Parcel Index No. 18-14-08-352-024 did not qualify for a property tax exemption for the 1999-assessment year was established by the admission into evidence of Dept. Ex. No. 1. The Department denied the requested exemption application finding that the property was not in exempt use. (Dept. Ex. No. 1; Tr. p. 11)

2. The seller executed a warranty deed on April 29, 1999, conveying Parcel Index Numbers 182-14-08-352-012, 182-14-08-352-013, 182-14-08-352-014, and 182-14-08-352-016 to the applicant. The deed was not tendered to the applicant until May 7, 1999, the time of the closing on the property. Parcel Index Number conversions in Fayette County were done by the Supervisor of Assessment's office in 1996. The conversion changed Parcel Index Numbers 182-14-08-352-012, 182-14-08-352-013, 182-14-08-352-014, and 182-14-08-352-016 to 18-14-08-352-024. (Dept. Ex. No. 1; Applicant's Exhibits C, D, and E; Tr. pp. 14-16, 24-25)

3. The subject parcel is 408' by 208'. The applicant acquired the property to be an extension of its existing parking lot and for possible future expansion of its workshop and administrative offices. (Dept. Ex. No. 1)

4. The applicant is a not-for-profit rehabilitation facility serving individuals that reside in Fayette, Bond, and Montgomery Counties with a variety of human services programs. Its activities range from services for infants to adults. The applicant's activities include housing, transporting, and training developmentally disabled adults (Tr. pp. 12-14)

5. I take administrative notice of the fact that the Department granted the applicant property tax exemptions for its Fayette County housing, training, and storage facilities pursuant to Docket Nos. 89-26-2, 89-26-3, 90-26-8, 91-26-6, and 94-26-6. (Applicant's Ex. G)

6. The subject property is located to the south and west of applicant's main facilities, and while not adjacent to the main properties, the applicant has access to the subject parcel

through a common driveway. The applicant and a neighboring business share the driveway. (Applicant's Ex. H; Dept. Ex. No. 1; Tr. pp. 19-20, 26, 32)

7. Subsequent to the closing on the subject property, the applicant contracted with Craig Excavation to bulldoze and clear the lot. The bulldozing and clearing took over 10 hours. The invoice for the work was dated September 17, 1999, and paid by the applicant on September 21, 1999. (Applicant's Ex. F; Tr. p. 25)

8. After the bulldozing was completed, the applicant had the subject parcel mowed and improvements were made. Gravel was laid on the subject parcel, and the applicant began parking on it on December 17, 1999. The property is used for overflow parking for applicant's programs. (Applicant's Ex. F; Tr. pp. 28-29)

Conclusions of Law:

Article IX, §6 of the Illinois Constitution of 1970, provides in part as follows:

The General Assembly by law may exempt from taxation only the property of the State, units of local government and school districts and property used exclusively for agricultural and horticultural societies, and for school, religious, cemetery and charitable purposes.

This provision is not self-executing but merely authorizes the General Assembly to enact legislation that exempts property within the constitutional limitations imposed. City of Chicago v. Illinois Department of Revenue, 147 Ill.2d 484 (1992).

Pursuant to the Constitutional authority, the legislature has enacted exemption provisions to the Property Tax Act. The statutory provision at issue is found at 35 **ILCS** 200/15-125 and exempts certain property from taxation in part as follows:

Parking areas, not leased or used for profit, when used as a part of a use for which an exemption is provided by this Code and owned by any school district, non-profit hospital, school, or religious or charitable institution which meets the qualifications for exemption, are exempt.

It is well settled in Illinois that when a statute purports to grant an exemption from taxation, the tax exemption provision is to be construed strictly against the one who asserts the claim of exemption. International College of Surgeons v. Brenza, 8 Ill.2d 141 (1956) Whenever doubt arises, it is to be resolved against exemption and in favor of taxation. People ex. rel. Goodman v. University of Illinois Foundation, 388 Ill. 363 (1941). Further, in ascertaining whether or not a property is statutorily tax exempt, the burden of establishing the right to the exemption is on the one who claims the exemption. MacMurray College v. Wright, 38 Ill.2d 272 (1967).

The applicant has established with testimony and documentation that it acquired the parcel at issue on May 7, 1999, at the closing. The applicant then had the land bulldozed, mowed, and graveled. The applicant began parking on the parcel on December 17, 1999. The applicant uses the parking lot in conjunction with its exempt programs.

I find that applicant's bulldozing, grading, and spreading gravel on the subject parcel was sufficient adaptation as a parking lot to warrant granting an exemption from the period of May 7, 1999 through December 31, 1999, the period of the assessment year at issue that the applicant owned the parcel. Weslin Properties, Inc. v. Department of Revenue, 157 Ill.App.3d 580 (2nd Dist. 1987)

For the foregoing reasons, I recommend that Fayette County Parcel Index No. 18-14-08-352-024 be exempt from property tax for 65% of the 1999-assessment year.

Respectfully Submitted,

Barbara S. Rowe
Administrative Law Judge
July 19, 2001